IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA, PITTSBURGH DIVISION

SYNERGY EARTH SYSTEMS, LLC, Plaintiff, v. NEW DOMINION CONSTRUCTION, INC., MICHAEL C. PASCUZZI, and NICHOLAS A. PASCUZZI III, Defendants.	)	Civil Action No.

COMPLAINT

Plaintiff Synergy Earth Systems, LLC, by and through its undersigned counsel, files this Complaint against Defendants New Dominion Construction, Inc., Michael C. Pascuzzi, and Nicholas A. Pascuzzi III, and in support thereof avers as follows:

Parties

1. Plaintiff Synergy Earth Systems, LLC ("Synergy") is a limited liability company organized and existing under the laws of the state of Alabama with its principal place of business located at 26240 Equity Drive, Daphne, Alabama 36526.

2. Upon information and belief, Defendant New Dominion Construction, Inc. ("New Dominion") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business located at 1554 Millers Run Road, McDonald, Pennsylvania 15057.

3. Upon information and belief, Defendant Michael C. Pascuzzi ("Michael Pascuzzi") is an adult individual who resides at 39 Grandview Avenue, Hickory, Pennsylvania 15340.

4. Upon information and belief, Defendant Nicholas A. Pascuzzi III ("Nicholas Pascuzzi") is an adult individual who resides at 53 Mulberry Hill Road, Washington, Pennsylvania 15301. (Michael Pascuzzi and Nicholas Pascuzzi may hereinafter be collectively referred to as the "Pascuzzis.")

Jurisdiction and Venue

5. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332(a)(1) because there is diversity of citizenship between Synergy and the Defendants and the amount in controversy exceeds $75,000.00, exclusive of interest and costs.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) because all Defendants reside in the judicial district.

Facts Common to All Counts

7. Synergy is a geotechnical construction company that specializes in addressing and overcoming construction-related problems arising from weak soils and difficult site geometry.

8. Upon information and belief, New Dominion provides civil and site construction services with a particular focus on servicing private clients in the solid waste landfill and oil and gas industries.

9. Upon information and belief, Michael Pascuzzi is a shareholder of New Dominion and, according to the Pennsylvania Department of State website, also serves as the company's President and Vice-President.

10. Upon information and belief, Nicholas Pascuzzi is a shareholder of New Dominion and, according to the Pennsylvania Department of State website, also serves as the company's Secretary and Treasurer.

11. Upon information and belief, at some time prior to August 23, 2016, New Dominion entered into a contract with The CFS Group Disposal & Recycling Services, LLC d/b/a Container First Services (the "Owner") pursuant to which New Dominion agreed to serve as the Owner's prime contractor responsible for the construction of the Tri-City Landfill – Phase III project located in Petersburg, Virginia (the "Project").

12. On or about August 23, 2016, New Dominion and Synergy entered into a subcontract (the "Subcontract") pursuant to which Synergy agreed to perform certain construction services necessary for the construction of a geogrid reinforced berm for the Project in exchange for a lump sum payment in the amount of $684,000.00, plus additions or deductions later made in accordance with the terms of the Subcontract, payable in regular installments as described more fully in the Subcontract. A true and correct copy of the Subcontract is attached hereto and incorporated herein as **Exhibit A**.

13. Synergy performed all of the work required under the Subcontract – together with extra and additional work – in a good, workmanlike and timely manner, and both New Dominion and the Owner accepted New Dominion's work without objection or complaint.

14. Indeed, both New Dominion and the Owner advised Synergy that its work was excellent.

15. Throughout the Project, and upon completion of its work, Synergy timely submitted invoices to New Dominion.

16. Upon information and belief, New Dominion invoiced the Owner for Synergy's work.

17. Upon information and belief, the Owner has paid New Dominion for all of Synergy's work.

18. Upon information and belief, in order to induce the Owner to make payments to New Dominion for work performed for the Project, the Pascuzzis falsely certified to the Owner in each of New Dominion's Applications For Payment, as well as accompanying Lien Waiver Forms, that New Dominion paid all of its subcontractors, including *inter alia*, Synergy, for work performed by those subcontractors for which New Dominion had previously received payment and that New Dominion would pay its subcontractors, including *inter alia*, Synergy, for all sums due the subcontractors.

19. Despite receiving, accepting, and being paid for Synergy's work, including extra and additional work, and despite representing to the Owner that it had already paid and/or would continue to pay Synergy for all work it performed on the Project, New Dominion has failed and refuses to pay Synergy for all of its work.

20. To date, New Dominion owes Synergy a principal balance of $297,511.25 for Synergy's work. This sum is comprised of $278,717.45 for base Subcontract work, together with an agreed-upon $18,793.80 for extra and additional work.

COUNT I – Breach of Contract
Synergy v. New Dominion

21. The foregoing paragraphs are incorporated by reference as if set forth in full herein.

22. The Subcontract between New Dominion and Synergy is a valid, binding, and enforceable agreement.

23. Pursuant to the terms of the Subcontract, New Dominion had and continues to have an obligation to pay Synergy for all of its work, including extra and additional work.

24. In breach of the Subcontract, New Dominion has failed and refuses to pay Synergy for all of its work, including extra and additional work.

25. As a direct and proximate cause of New Dominion's breach of the Subcontract, Synergy has sustained damages in excess of the principal amount of $297,511.25.

WHEREFORE, Plaintiff Synergy Earth Systems, LLC respectfully requests that this Honorable Court enter judgment in its favor and against Defendant New Dominion Construction, Inc. for an amount in excess of the principal amount of $297,511.25, plus costs of suit, pre and post-judgment interest, attorneys' fees, and all other relief the Court deems just and equitable.

COUNT II – Unjust Enrichment
Synergy v. New Dominion (pleaded in the alternative)

26. The foregoing paragraphs are incorporated by reference as if set forth in full herein.

27. Synergy performed all work required of it for the Project pursuant to the instruction and direction of New Dominion.

28. Upon information and belief, the Owner has paid New Dominion the fair value of Synergy's work.

29. New Dominion has failed and refuses to pay Synergy the full value of its work, and New Dominion's retention of the funds paid by the Owner for the full value of Synergy's work has unjustly enriched New Dominion at Synergy's expense.

WHEREFORE, Plaintiff Synergy Earth Systems, LLC respectfully requests that this Honorable Court enter judgment in its favor and against Defendant New Dominion Construction, Inc. for an amount in excess of the principal amount of $297,511.25, plus costs of suit, pre and post-judgment interest, attorneys' fees, and all other relief the Court deems just and equitable.

COUNT III – Intentional Misrepresentation (Fraud)
Synergy v. New Dominion, Michael Pascuzzi, and Nicholas Pascuzzi

30. The foregoing paragraphs are incorporated by reference as if set forth in full herein.

31. In order to induce the Owner to make payment to New Dominion for the work performed by its subcontractors on the Project, including Synergy, New Dominion submitted lien waivers executed by the Pascuzzis to the Owner in which New Dominion and the Pascuzzis represented that "all laborers, subcontractors, and suppliers employed by [New Dominion] have been paid all sums previously due and will be paid all current sums due out of this payment…."

32. The representations made in the lien waivers were offered by the Pascuzzis and the lien waivers bear their signatures.

33. In order to induce the Owner to make payment to New Dominion for the work performed by its subcontractors on the Project, including Synergy, New Dominion also submitted Applications for Payment executed by the Pascuzzis to the Owner in which New Dominion and the Pascuzzis certified that the "all amounts have been paid by [New Dominion] for work which previous Certificates for Payment were issued and payments received from the Owner...."

34. The representations made in the Applications for Payment were offered by the Pascuzzis and the lien waivers bear their notarized signatures.

35. The representations New Dominion and the Pascuzzis made to the Owner in the lien waivers and Applications for Payment were false, and New Dominion and the Pascuzzis

knew them to be false because they knew that New Dominion had not, in fact, paid Synergy for all of the work Synergy performed on the Project.

36. New Dominion and the Pascuzzis made those false representations to the Owner with the intent to mislead the Owner into relying upon those false representations so that the Owner would pay and continue paying New Dominion for work performed by subcontractors rather than withholding payments and/or issuing joint checks in the name of New Dominion and its subcontractors.

37. The Owner was justified in relying upon the false representations made by New Dominion and the Pascuzzis.

38. The false representations New Dominion and the Pascuzzis made to the Owner directly and proximately resulted in Synergy not being paid at least $297,511.25 for the work it performed on the Project.

WHEREFORE, Plaintiff Synergy Earth Systems, LLC respectfully requests that this Honorable Court enter judgment in its favor and against Defendants New Dominion Construction, Inc., Michael C. Pascuzzi, and Nicholas A. Pascuzzi III for an amount in excess of the principal amount of $297,511.25, plus costs of suit, attorneys' fees, pre and post-judgment interest, punitive damages, and all other relief the Court deems just and equitable.

COUNT IV – Negligent Misrepresentation
Synergy v. New Dominion, Michael Pascuzzi, and Nicholas Pascuzzi
(pleaded in the alternative)

39. The foregoing paragraphs are incorporated by reference as if set forth in full herein.

40. In order to induce the Owner to make payment to New Dominion for the work performed by its subcontractors on the Project, including Synergy, New Dominion submitted lien

waivers executed by the Pascuzzis to the Owner in which New Dominion and the Pascuzzis represented that "all laborers, subcontractors, and suppliers employed by [New Dominion] have been paid all sums previously due and will be paid all current sums due out of this payment...."

41. The representations made in the lien waivers were offered by the Pascuzzis and the lien waivers bear their signature.

42. In order to induce the Owner to make payment to New Dominion for the work performed by its subcontractors on the Project, including Synergy, New Dominion also submitted Applications for Payment executed by the Pascuzzis to the Owner in which New Dominion and the Pascuzzis certified that the "all amounts have been paid by [New Dominion] for work which previous Certificates for Payment were issued and payments received from the Owner...."

43. The representations made in the Applications for Payment were offered by the Pascuzzis and the lien waivers bear their notarized signatures.

44. The representations New Dominion and the Pascuzzis made to the Owner in the lien waivers and Applications for Payment were false, and New Dominion and the Pascuzzis ought to have known of their falsity.

45. New Dominion and the Pascuzzis made those representations to the Owner with the intent to induce the owner to pay and continue paying New Dominion for work performed by subcontractors rather than withholding payments and/or issuing joint checks in the name of New Dominion and its subcontractors.

46. The Owner was justified in relying upon the false representations made by New Dominion and the Pascuzzis.

47. The false representations New Dominion and the Pascuzzis made to the Owner directly and proximately resulted in Synergy not being paid at least $297,511.25 for the work it performed on the Project.

WHEREFORE, Plaintiff Synergy Earth Systems, LLC respectfully requests that this Honorable Court enter judgment in its favor and against Defendants New Dominion Construction, Inc., Michael C. Pascuzzi, and Nicholas A. Pascuzzi III for an amount in excess of the principal amount of $297,511.25, plus costs of suit, attorneys' fees, pre and post-judgment interest, punitive damages, and all other relief the Court deems just and equitable.

Respectfully submitted,

Dated: July 20, 2017

/s/ Marc J. Felezzola

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